



Comptroller General
of the United States

Washington, D.C. 20548

087690
Overrules 67 Comp Gen 443 (1988)

Decision

AF

Matter of: GSA Authority to Lease New Space for Child Care Facilities

File: B-239708

Date: January 31, 1991

DIGEST

The General Services Administration (GSA) may lease space or construct buildings specifically for child care facilities if there is insufficient space available for such purposes in its existing inventory. The Triple amendment, 40 U.S.C. § 490b, authorizes officials controlling space in federal buildings to provide space for child care facilities if, among other requirements, "such space is available." Because a restrictive reading of the "space available" language (in light of the limited existing inventory of appropriate space in federal buildings) would effectively preclude GSA from providing space for child care; and because the legislative history of the Federal Credit Union Act, upon which the Triple amendment is modeled, indicates that the "space available" language was not intended to limit agency ability to provide facilities for credit unions, we interpret the statute as permitting GSA to acquire space to make it available for child care facilities. To the extent it is inconsistent with this decision, 67 Comp. Gen. 443 (1988) is overruled.

DECISION

The General Counsel of the General Services Administration (GSA), Washington, D.C., asks whether GSA has authority to lease additional space or construct facilities for child care centers for federal employees. For the reasons indicated below, we hold that GSA has such authority.

BACKGROUND

40 U.S.C. § 490b (1988) provides in pertinent part that:

- (a) If any individual or entity which provides or proposes to provide child care services for Federal employees applies to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such individual or entity provides or proposes to provide such service, such officer or

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agency may allot space in such a building to such individual or entity if--

(1) such space is available;

(2) such officer or agency determines that such space will be used to provide child care services to a group of individuals of whom at least 50 percent are Federal employees; and

(3) ~~such officer or agency determines that~~ such individual or entity will give priority for available child care services in such space to Federal employees.

(b) (i) If an officer or agency allots space to an individual or entity under subsection (a) of this section, such space may be provided to such individual or entity without charge for rent or services (emphasis added).

This provision is commonly referred to as the Tribble amendment, after Senator Tribble, who introduced the legislation which was enacted in Pub. L. No. 99-190, § 139, 99 Stat. 1185, 1323 (1985). According to Senator Tribble, "[v]ery simply, my amendment would permit child care facilities in federal buildings to be treated in the same manner as credit unions in Federal buildings. Currently, if space is available, credit unions may be granted space in Federal buildings rent-free . . . if our policy is to provide space for such services rent-free, surely we can extend this same treatment to facilities which would meet the urgent needs of working parents." 131 Cong. Rec. 25,075 (1985).

According to GSA's submission "there is very little vacant available space in the GSA inventory in locations where needs exist for child care centers." GSA officials and others maintain that an interpretation of the Tribble amendment's "available space" provision to mean only vacant existing space is unworkable, and as a practical matter, conflicts with the purpose of the Tribble amendment. In this regard, we understand that agencies request space for such employee amenities as credit unions, health units, and child care centers in space either to be constructed or leased. Similarly, GSA points out that reassignment, consolidation, or transfer of office space within existing space, or as supplemented by newly leased space, does make space available although not necessarily the most suitable space for child care facilities. Thus, GSA interprets the Tribble amendment as allowing it to lease additional space, when needed, to accommodate child care centers. This policy has also been

encouraged by the Government Activities Subcommittee, Committee on Government Operations, House of Representatives. See H.R. Rep. No. 333, 100th Cong., 1st Sess. 4 (1987).

DISCUSSION

GSA asks whether the provision in 40 U.S.C. § 490b^X authorizing federal agencies to provide space for child care facilities "if such space is available" allows GSA to lease or construct additional space for child care facilities. The answer to this question hinges on whether Congress intended the phrase "~~if such space is available~~" to preclude the use of other than existing space in the Government's inventory at the time of the request for space to support child care.

We considered this question in 67 Comp. Gen. 443^X as it applied to the Air Force. There we stated that the Air Force's authority to allocate space for civilian child care is limited by 40 U.S.C. 490b to the allocation of "available" space in federal buildings. We construed "available" to preclude the Air Force from leasing new space specifically for civilian child care facilities, suggesting that "available" space is limited to vacant space existing in an agency's inventory at some fixed point in time. Id. at 447.

In light of a more detailed examination of the Tribble amendment, particularly the phrase "if such space is available," and the amendment's purpose and legislative history, we are now of the opinion that Congress merely intended the "space available" phrase to empower agency officials to prevent other government functions from being displaced by child care facilities, rather than prohibit an agency obtaining additional space specifically for child care.

The purpose of 40 U.S.C. § 490b^X is to permit greater availability of child care facilities to working parents employed by the federal government. See H.R. Rep. No. 210, 99th Cong., 1st Sess. 69 (1985). If facilities for child care are only to be allotted pre-existing vacant space, then the intent of the legislation is defeated because, according to GSA, little pre-existing space can be utilized for child care without displacing other government activities.

The legislative history of the Tribble amendment does not directly and specifically address what Congress meant by the use of the "available space" provision. The amendment's legislative history indicates that the Federal Credit Union Act, Pub. L. No. 75-197, 50 Stat. 487 (1937) (codified at 12 U.S.C. § 1770 (1988)), served as a model for the Tribble amendment, see H.R. Rep. No. 210, 99th Cong., 1st Sess. 69 (1985); see also 131 Cong. Rec. 25,075 (1985) (statements of Senators Tribble, Abdnor, and DeConcini, cosponsors of Pub. L.

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No. 99-190), and accordingly we have referred to the legislative history of that act. In this regard, the Federal Credit Union Act provides that

upon application by any credit union . . . to the officer or agency of the United States charged with the allotment of space in the Federal buildings . . . such officer or agency may in his or her discretion allot space to such credit union if space is available without charge for rent or services. (emphasis added).

The legislative history behind the Federal Credit Union Act indicates that an earlier version of the proposed legislation (H.R. 6287) imposed a mandatory duty on an agency to assign space, upon application by a credit union, and did not consider the possibility that no space would be available without displacing some other government activity. This version simply provided that "such officer or agency shall allot adequate space in such building to such credit union." H.R. 6287 as introduced by Mr. Cochran, April 9, 1937. In commenting on this proposal, the Treasury Department stated that "there should be administrative discretion to decide whether the space conditions in particular buildings would permit the allotment of space to credit unions without undue interference with Government activities." Accordingly the Treasury Department recommended that the language of the bill be changed to provide that "such officer or agency may, in his or its discretion, allot space to such credit union if space is available." H.R. Rep. No. 932, 75th Cong., 1st Sess. 2 (1937). Likewise, the Office of the Postmaster General recommended the same change in order to "obviate any contention that the proposed legislation would give Federal credit unions a preferred claim upon available space." *Id.* at 3.

Because the primary purpose of the Federal Credit Union Act was to give agencies discretion to allot space to credit unions, Congress included the phrase "if space is available" to preclude the argument that federal credit unions had an entitlement to space superior to other government activities. Congress modified the original language to bestow discretion, not to limit agency support for the activity, and to grant authority to manage that activity and integrate it and its space needs within the agency's total space needs. Indeed, as a result of this Act, we stated that "Federal agencies may allot space to credit unions as they wish." B-177610, July 23, 1982 at 6.

Just as we do not think that Congress intended the phrase "if space is available" to be a limitation on federal agencies obtaining space for credit unions, we also conclude that the

identical "space available" phrase in the Tribble amendment, 40 U.S.C. § 490b ~~was~~ not intended to limit an agency's ability to obtain space for child care facilities. In our opinion, the "space available" provision can only be understood in the context of an agency's overall budgetary constraints and management of its space and resources to fulfill its mission. Consequently, we do not view 40 U.S.C. § 490b ~~as~~ a limitation on GSA's authority to lease space or construct buildings specifically for child care facilities for the benefit of federal agencies and their employees. ~~To the extent we held to the contrary in 67 Comp. Gen. 443, that decision is overruled.~~

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for Comptroller General
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Appropriations/Financial Management
Appropriation Availability
Purpose availability
Office space
Use
Child care services